



Missouri Department of Natural Resources

Clean Water Commission Water Pollution Control Program

Meeting Minutes

April 23, 2003

MISSOURI CLEAN WATER COMMISSION MEETING
April 23, 2003
Inn at Grand Glaize, Osage Beach, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
William A. Easley, Jr., Commissioner, Missouri Clean Water Commission
Paul E. Hauser, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Bill Bryan, Assistant Attorney General, Jefferson City, Missouri
John Carter, The Doe Run Resources Corporation, Viburnum, Missouri
Randy Clarkson, Department of Natural Resources, Jefferson City, Missouri
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Conrad Eurom, Powersville, Missouri
Denise Evans, Department of Natural Resources, Jefferson City, Missouri
Bob Hentges, Missouri Public Utilities Association, Jefferson City, Missouri
Jim Hull, Director of Staff, Missouri Clean Water Commission
Sallie Keeney, REGFORM, Jefferson City, Missouri
Richard Laux, Department of Natural Resources, Jefferson City, Missouri
Terry Leeds, KCMO Water Services, Kansas City, Missouri
Bruce Litzsinger, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Jim Lunan, Holcim, Bloomsdale, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
John Pozzo, Ameren, St. Louis, Missouri
Fritz Ritter, Lake Region Water and Sewer Company
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Terry Spence, Unionville, Missouri
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri
Nongluk Tunyavanich, Meramec Regional Planning Commission, St. James, Missouri
Diane Waidelich, Secretary, Missouri Clean Water Commission
Bob Williamson, Water Services, Kansas City, Missouri

Chairman Herrmann called the meeting to order and introduced Vice-Chairman Minton, Commissioners Kelly, Perry, Easley and new commissioner Paul Hauser; Director of Staff Jim Hull; and Secretary Diane Waidelich. Commissioner Greene was not in attendance.

Chairman Herrmann announced that Commissioner Greene was named by the Dixon Park Zoo and Friends of the Zoo in Springfield, Missouri as Biologist Earth Hero of the Year. Commissioner Greene is the biologist for Southwest Missouri State University and the Bull Shoals Field Station Director.

Chairman Herrmann announced that the Department of Natural Resources Water Pollution Control Program Nonpoint Source Unit was recognized by the Conservation Federation as Water Conservationist of the Year.

ADMINISTRATIVE MATTERS

Adoption of February 26, 2003 Commission Meeting Minutes

Commissioner Perry moved to **adopt the February 26, 2003 minutes** as submitted by staff; seconded by Commissioner Easley and unanimously passed.

Chairman Herrmann asked for an update on the City of Kirksville's loan.

Ann Crawford, Acting Chief of the Financial Services Section, informed the commission that staff has picked up all of the loan money that Kirksville requested and closed on their State Revolving Fund loan.

Responding to Chairman Herrmann's update request regarding Branson West, Ms. Crawford reported staff has not yet recovered enough money to fund the Branson West project.

FY 03 319 Nonpoint Source Grant Applications

Becky Shannon, Acting Chief of the Water Pollution Control Program Planning Section, reported the state's nonpoint source pollution control program is carried out through voluntary demonstration, information, and restoration projects. Each grant cycle begins with a solicitation for proposals that can come from any unit of government, not-for-profit organizations, and institutions of higher education. The Request for Proposals for FY 2003 was distributed in July 2002 and the department received 22 proposals in response. An interagency review committee was convened to review each project. Sponsors were interviewed prior to recommending the prioritization for funding. Ms. Shannon noted the recommendations for prioritization are being presented to the commission for approval today. The projects that are approved by the commission and that are eligible for funding will be included in the FY 2003 Section 319 grant. That application will be sent to EPA after an analysis of the funding availability and identification of the specific projects that are eligible for funding.

Ms. Shannon reported the level of funding in FY 2002 was approximately \$5.3 million. Section 319 of the Clean Water Act and EPA guidance provide for the states to use a percentage of the grant award for monitoring, assessment, planning and administrative activities such as project oversight and grant administration. The amount of the FY 2003 award is slightly less than \$5.3 million.

The department budgeted about \$1 million of the grant in FY 2002 for the purposes of administration, monitoring, and assessment. Ms. Shannon stated all of the proposed projects and the proposed budget will be subject to approval by EPA. The guidance from EPA for the use of 319 monies has changed every year over the last several years and staff has been analyzing the EPA guidance and the projects to determine what projects are eligible for what monies from EPA. Base funding is flexible funding that can be used simply under the authority of Section 319 and general EPA guidance to encourage protection of water from nonpoint sources of water pollution and often is used for education and outreach activities. In 1999 EPA received from Congress special funding for Section 319 which was referred to as incremental funding which has strings attached to it. Ms. Shannon stated EPA specifically identifies the types of projects that are eligible for incremental funding.

Ms. Shannon explained there are also opportunities for smaller information and education projects called minigrants. These grants are available to not-for-profit organizations as well as government agencies and schools. These minigrants will support projects up to \$5,000. Applications for these grants are solicited without a deadline and grants are awarded on a quarterly basis. These applications are reviewed by department staff.

Ms. Shannon asked that the commission approve the FY 2003 application ranking developed by the interagency review committee.

Commissioner Minton asked how long it will be before the split between the base and incremental funding is known and what the limitations of the incremental funding will be.

Ms. Shannon responded staff can provide that information to the commission. Previously staff was able to identify what funds would fall into which category when the ranking was brought to the commission. In other years staff did not have the guidance and they went down the list in order identifying which project was eligible for which funding source and continued as far down as they could go.

Commissioner Minton asked if staff can project the split.

Ms. Shannon replied it is slightly less than fifty percent for the incremental money.

Chairman Herrmann stated four projects are listed as restoration or reclamation projects leaving 18 projects listed as information or education. He questioned how much improvement or impact on water quality is being achieved since the money is going to so many informational/educational programs that seem to not be accomplishing anything positive other than hopefully educating school children or the public in some particular facet rather than going to specific projects that have an impact on water quality. Chairman Herrmann asked how the ranking was arrived at.

Ms. Shannon responded the indication of restoration versus information/education is actually an artifact from previous years when EPA indicated that the incremental money had to be used for restoration projects. This year EPA has told staff the incremental money has to be used for projects specifically addressing 303(d) listed waters and for the development or implementation of watershed plans on those waters. Preliminary analysis is that there will likely not be enough projects on the list to use all of the incremental money available. If that is the case, staff will need to do a supplemental Request for Proposals as was done in 2001.

Commissioner Minton asked if some of the money can be held back or if it has to be allocated now.

Ms. Shannon replied this is multi-year funding in which projects are typically funded for a five-year period. If not all of the grant money is spent, there is an opportunity to redirect funds to other eligible projects or activities.

Commissioner Minton asked if the funding can be redirected somewhere other than 319 grants and what flexibility is involved with that.

Ms. Shannon replied EPA provides a great deal of flexibility; the money has to be used for nonpoint source activities consistent with the federal law and regulations governing grant monies. Funds from a 1997 grant have recently been redirected to some additional monitoring. One of the projects the money was obligated to did not occur so the money was deobligated and available for use on other nonpoint source water quality issues.

Commissioner Minton asked if the money initially has to be presented to the commission for 319 grants after which they or staff can decide to allocate a certain portion for 319 and the remainder for other projects.

Ms. Shannon responded historically staff has not known how much money was available at the time they bring the proposals to the commission. The commission has been asked to prioritize the proposals and staff funds as far down the list as possible.

Commissioner Minton asked if the \$5.3 million is all that is available for this round of funding.

Ms. Shannon replied that is all that is available for this round of funding.

Commissioner Minton questioned whether the commission will decide whether to use these funds for 319 or for other projects.

Ms. Shannon noted they will but historically the department has withheld about 20% for administration of the grants and for monitoring and assessment.

Commissioner Minton noted the percentage withheld may be different if the commission decides to spend a lesser amount.

Ms. Shannon responded the program's budget is based on the approximate amount of money that was used last year. She noted an example is the volunteer monitoring program that is not part of the competitive process but is funded with 319 funds.

Commissioner Minton noted several years ago the commission attempted to divert money to nonpoint source, possibly redirecting through the county Soil and Water Conservation Districts where staff is already in place and the money would actually go to ground activities. He continued that he was never aware that some of the 319 money could be withheld and allocated to other venues. Commissioner Minton asked if the money could be given to the Soil and Water Conservation Districts on a cost-share program basis. He stated that is the most economical way to get money to the ground and start impacting water quality issues. He continued that many of these districts have to send money back to the Soil and Water Conservation Commission because items on the cost-share docket cannot be addressed. There are water quality issues they could do if there was something on the cost-share docket to utilize the money.

Ms. Shannon replied she has not considered that alternative. Staff has coordinated very closely with the Soil and Water Conservation Districts and the Soil and Water Conservation Program to try to use the various funding sources available including EQIP, other federal funds, and Department of Conservation funding when it is appropriate. 319 funding can be used in many ways that Soil and Water Conservation funding cannot be used such as on urban projects.

Commissioner Minton stated the priority and emphasis of the Soil and Water Conservation Commission is soil losses. He continued he has lobbied the commission numerous times to try to expand their cost-share docket to deal with water quality and they are not going to do it. Commissioner Minton stated it falls on the Clean Water Commission to address the water

quality issues and this looks like an excellent mechanism to divert this money to water quality issues, such as watershed planning, throughout the state. He continued this disseminates this money into venues where there is only one Soil and Water Conservation District making application for a 319 grant. Commissioner Minton stated obviously they are not aware of the money being available or they do not know how to write grants. He added that someone from the Greene County area is very good at writing grants and has the ability to glean an enormous amount of 319 money. Commissioner Minton noted he realizes there are enormous water quality issues in that part of the state and while he is very supportive of their efforts, there are issues throughout the entire state. He stated he is willing to support them but not at the expense of the rest of the state. Commissioner Minton noted many Soil and Water Conservation Districts throughout the state are clueless regarding the process of getting this money. He suggested Outreach and Assistance might help with this function.

Ms. Shannon replied EPA guidance written regarding incremental funding for this year would significantly challenge staff to use that money in this manner because of the need for using it only on the 303(d) listed waters and only for the development or the implementation of a watershed plan.

Commissioner Minton noted there is still \$3 million for something other than education. He continued he is supportive of educational projects but he would like to know that he has impacted the waters of the state when he spends the taxpayer's money. Commissioner Minton stated he is very uncomfortable with what he sees as fat in the 319 grant applications and the fact that it's about salaries and web sites and computers. Supporting the list as it is presently presented will not assure wise use of the taxpayer's money. Commissioner Minton noted he wants to know that the citizens feel good about the one-eighth cent sales tax and all the web sites in the world will not clean up a five-gallon bucket of water. He continued millions of dollars are being spent reinventing the wheel or trying to describe a better wheel.

Commissioner Perry noted she is very interested in what the incremental money has to be used for and asked if that is only for 303(d) listed waters and only for watershed plans. She also asked what a watershed plan means.

Ms. Shannon responded the incremental money has to be used for development or implementation of a watershed plan. If there's a watershed plan developed, the funding can be used to implement the provisions of that plan.

Commissioner Easley asked if it is known what categories the projects would fall under.

Ms. Shannon responded a preliminary analysis has been completed and that is the basis for the statement that there probably won't be enough projects to use the funding.

Commissioner Perry asked if staff can get an idea of what projects will fall under the incremental funding from the preliminary analysis.

Ms. Shannon stated EPA involvement is needed.

Commissioner Perry asked if EPA was a part of the committee that heard the presentations.

Ms. Shannon replied there are several issues to consider: if the project impacts a 303(d) water directly and if there is a watershed plan in place that meets the EPA definition of watershed plan. She continued that the one factor that makes it most difficult to address this question is would the project fit that watershed plan.

Commissioner Perry asked if these are the 1999 guidelines.

Ms. Shannon replied these guidelines are for FY 2003.

Commissioner Perry asked if these guidelines were available when the Request for Proposals were sent out.

Ms. Shannon responded they were not available at that time.

Commissioner Perry noted the individuals that had to write the grants did not know the requirements.

Ms. Shannon replied staff believed they knew the guidelines because EPA had issued guidelines in 2002 but then changed them in 2003. Staff included in the Request for Proposals a discussion of the incremental versus base funding and established that there is a priority for 303(d) listed waters along with language that the incremental money would likely be tied to 303(d) listed waters.

Commissioner Perry asked which ones those are.

Ms. Shannon explained this information is not in the compilation document. She continued with an example of the St. Francis Soil and Water Conservation District project which involves a watershed that has a 303(d)-listed water, however, the project is for groundwater and there is no watershed plan in place. The analysis is still looking at whether the project would affect the contaminant of concern in Big River.

Commissioner Perry noted the individuals that wrote the grants were operating without the information they needed because they didn't know what the requirements were.

Ms. Shannon replied they did not know the specifics of the guidance document. The pots of money have been combined so they are competing for the funding that doesn't require a plan at the same time they are competing for funding that requires a plan. Ms. Shannon stated due to the scheduling, not all the information is available before the Request for Proposals goes out. The criteria for evaluating the proposals encourages watershed projects with more weight being given to those during the evaluation process. Ms. Shannon noted restoration projects and waters that are on the 303(d) List are also encouraged.

Commissioner Perry asked if those that have watershed plans are reflected in the ranking.

Ms. Shannon replied the existence of the watershed plan was not a criteria that was used but rather the project being a watershed based project.

Commissioner Easley asked who the review committee consists of.

Ms. Shannon replied this is a group of about 20 natural resource professionals from state and federal government agencies consisting of the Department of Natural Resources, Department of Conservation, Department of Health and Senior Services, Natural Resources Conservation Service, and EPA.

Commissioner Easley asked for a list of these individuals along with their positions.

Commissioner Perry asked if there is money remaining from last year.

Ms. Shannon responded not all the grants have been written to award the money from last year but it is all slated to go to a particular project or the administrative or monitoring activities. She concluded that subgrant agreements are still being negotiated.

Commissioner Perry asked if the \$1.2 million used for administration is also used for the Stream Team program.

Ms. Shannon replied conducting the Volunteer Monitoring Program is part of the 319 funding but she did not recall if that falls within the \$1.2 million or within the project component.

Commissioner Minton asked if last year was the first year that there were more requests than there was money available.

Ms. Shannon explained there were grants that went unfunded last year because there was not enough money to fund the entire list. There was only one year when there was more money than projects. Ms. Shannon noted this was the year that the target request for proposals was done after the fact because there were only a few eligible projects that year.

Chairman Herrmann commented the commission recently received notice that the department awarded \$480,000 to the Valley Mill Lake and Watershed Restoration project. He explained the FY 01 list denotes a 319 grant for \$40,000 and asked where the rest of the money came from.

Ms. Shannon replied the department is putting all 319 money into this project. She continued this project competed in the regular competition but she did not recall the specifics.

Commissioner Perry noted another \$183,000 has also been requested for that project.

Ms. Shannon stated she will need to look up the particular funding to answer this question. She explained EPA used to have 316 funding available through the Clean Lakes Program. This funding source was eliminated several years ago and states were encouraged to use 319 funding to do lakes related projects. The Valley Mill project was one of those. It competed with the other 319 projects but fit under the Clean Lakes projects.

Chairman Herrmann noted Valley Mill is not listed on the 303(d) List.

Ms. Shannon replied it is not a 303(d) related project. The project that was applied for this time is to do demonstration activities at the education center.

Commissioner Perry noted it's ranked fourth but it's not a 303(d) site.

Ms. Shannon replied one of the priorities is to have 303(d) listed waters.

Commissioner Perry noted the purpose of that project was to demonstrate installation for wastewater installers.

Ms. Shannon replied it was for on-site home septic systems which fall under the nonpoint source area.

Commissioner Perry asked how many wastewater installers there are in that watershed.

Ms. Shannon noted the \$480,000 was to address the water quality in that watershed and this particular water. The project that was applied for this year was to use the resources that they are developing at that site and set up a demonstration system for the people who are visiting that property and to have training associated with that.

Commissioner Perry noted in addition they want nearly \$400,000 for a second radio marketing campaign.

Ms. Shannon noted they had a mini-grant for the first promotion.

Commissioner Perry stated they now want to take 10% of the new funds to do a radio promotion for this one educational center.

Ms. Shannon replied the promotion is a marketing campaign for protecting water resources for the entire region. She noted the scope of the project went beyond radio messages but she did not recall specifics.

Commissioner Perry asked why a marketing campaign of that amount ranks so much higher than some of the on-the-ground technical assistance programs lower on the list.

Ms. Shannon responded that, in addition to the factors used to rank the projects that have already been mentioned, there are other factors such as likelihood of success.

Commissioner Perry asked if that indicates there is a preference for those applicants that have a certain track record.

Ms. Shannon replied before a grant application is written to EPA, people that are going to be helping on that project need to be contacted and then convey that to EPA.

Commissioner Perry stated having partners and having letters from partners is the reason that the radio marketing program ranks higher on the list.

Ms. Shannon noted that is an example of the issues that are considered by the individuals that evaluate the projects.

Commissioner Perry noted it's pretty well an opinion of what they think the success will be because the specific criteria such as the impact on the environment are not rated.

Ms. Shannon noted it is an opinion as would be a determination of a numerical number of the impact on the environment.

Commissioner Perry noted the goal for the overall 319 program is projects that restore water quality. She noted she agrees with Commissioner Minton that her priority would be extremely different because there are projects that would do a very fine job of actually impacting the water quality of the state but they don't tend to be at the top of the list; projects at the top of the list are very broad-based, informational programs to convince the public that we have a water problem. Commissioner Perry stated there are many that fall lower on the list who are well aware that they have a water problem and have some good ideas on how to fix them. She noted her concern that the priorities are confused and people that are experiencing cuts in other areas are using 319 to support salaries that they couldn't otherwise cover or to buy equipment that they want. Commissioner Perry stated she is not sure how this is impacting the quality of the water in the state and that these proposals have been scrutinized as carefully as they should be.

Ms. Shannon responded she would rank them differently also and she suspects that each one of the individuals that look at these projects would rank them differently. The system that is used yields this particular result.

Commissioner Perry stated the statutes say it is the Clean Water Commission's responsibility to distribute this money and she is not sure there is enough information available to do that in the best way.

Commissioner Minton stated he would be more comfortable prioritizing this list if he knew how many projects fall under the incremental funding. He continued that he would also like to explore redirecting money into the Soil and Water Conservation Districts. Commissioner Minton suggested the department can then come to the commission throughout the year, because funding is going to be devastated, and determine what water quality projects that are going to be lost due to budget cuts that could be picked up and funded through 319 monies. He stated he does not have enough information today to support the list and he believes the department can spend the money more wisely in many situations than how it would be spent by approval of this list.

Commissioner Perry noted she would like to know how much money has been given to certain parties in the past because it looks bad for a statewide program to be constantly going back to the same people. She noted it looks like there is favoritism toward certain parties.

Chairman Herrmann stated one party has received about \$1.5 million where others have gotten none or very little which is related to the ability to write a grant application that draws the attention of the review committee and not necessarily based on technical merit.

Commissioner Minton noted he is not faulting these individuals who are doing a very good job and they should be applauded for their efforts but there has to be a balance.

Commissioner Perry asked how the Request for Proposals are sent out.

Ms. Shannon replied for the last several years staff have attended the Soil and Water Conservation Districts training conference and staff from soil and water are now working in the nonpoint source area. She continued staff has done what was within reason within the existing system to solicit 319 applications. The Special Area Land Treatment (SALT) coordinator from the Soil and Water Conservation Program is a former employee of the nonpoint source unit.

Commissioner Minton noted he is surprised that there is only one application from Soil and Water Conservation Districts.

Ms. Shannon stated there have been more in the past and she is assuming the districts have been very busy applying for SALT money.

Commissioner Minton noted the districts are trying to work through many different programs. He continued that the Department of Conservation, Department of Natural Resources, the University of Missouri, and Greene County have been very effective at getting the majority of 319 funding.

Commissioner Perry noted the commission focused on the Southwest region several years ago and those that were successful then have repeatedly come back.

Ms. Shannon replied a targeted Request for Proposals was done for the Elk River. She continued that none of these applicants had applied for funding except for the University of Missouri Outreach and Extension. The recipients of the targeted funding were the McDonald County Soil and Water Conservation District, the University of Missouri Outreach and Extension for that particular region, and the department's Outreach and Assistance Center is doing a composting project with poultry litter in that area.

Commissioner Perry asked if this is the same year that Valley Mill received \$40,000.

Ms. Shannon replied she needs to refresh her memory on when these were done.

Commissioner Perry noted the map showing the concentration of projects makes her wonder if the other parts of the state need to be given a chance. She asked if Smithville Lake was delisted.

Ms. Shannon replied she believes it is included on this list for atrazine. (Note: Ms. Shannon found that the department proposed Smithville Lake be delisted for atrazine but added for mercury.)

Commissioner Perry asked if some of the projects proposed for this year were also proposed last year.

Ms. Shannon responded the context of the Missouri River Relief project is similar to a project proposed last year but the project is described quite differently. Smithville Lake did apply last year but was not funded.

Mr. Hull suggested allowing the department to reevaluate the list taking into account the commission's comments and the budget impacts the department is experiencing.

Responding to Chairman Herrmann's question regarding allocation of the 319 money, Ms. Shannon stated Congress has allocated the money to the states and it is available to apply for at any time. When the funding is applied for, staff has to be specific about the projects but staff has until September to apply.

Chairman Herrmann reiterated the commission wants to know how much they will impact the water quality of the state as opposed to how will the average citizen be educated and are the items that they want really needed for the projects because that won't really have an impact on water quality. He thought the list should be reprioritized emphasizing projects that will have an impact on water quality of the state as the primary emphasis for implementation and recommendation. Staff also needs to look at the previous year's list and look at projects where the same subject has already been covered.

Commissioner Kelly stated she will support this position after discussing funding for education or the more tangible aspects of improving water quality. She continued that education does impact the environment and the average citizen needs to be educated and it is the commission's responsibility to do so. Commissioner Kelly further noted that as commissioners they are not able to look at every project to make a decision but rather need to rely on the committee's evaluation.

Chairman Herrmann noted he questions spending \$185,750 for community on-site waste and storm water disposal, which has been covered many times in other watersheds.

Commissioner Kelly stated she can't defend every item on the list but she does feel there is a need for education.

Commissioner Minton noted those that apply for these grants are spending taxpayers' money, and therefore their own money, and asked if they would request some of the items in the applications if they had to pay the money back. He continued that the commission is to address the water quality issues of the state and spend the taxpayers' money as wisely as they can. Commissioner Minton stated it reflects back on the commission if they approve these requests.

Commissioner Perry moved to **direct the staff to restudy the present application ranking and reprioritize the list recognizing the concerns of the commission including what funding is available and how much of the funding will be used, how much funding has been applied for and received in the past, and what similar projects have been done in the past and where they were done;** seconded by Commissioner Minton and unanimously passed.

Commissioner Minton asked that staff provide information on the \$480,000 grant to the Valley Mill project.

Watershed Report – Missouri's Unified Watershed Assessment

Chris Barnett, Center for Agricultural, Resource & Environmental Systems (CARES), University of Missouri, Columbia explained that the Unified Watershed Assessment was a component of the EPA/USDA Clean Water Action Plan. The objective of the assessment was to have a collaborative approach done at the individual levels and then brought into a national picture. The main goal was to identify watersheds in the nation not meeting the clean water and other natural resource goals as outlined in the Clean Water Action Plan. The Missouri Department of Natural Resources and the Natural Resources Conservation Service took the lead in the project with other participating such as Department of Conservation, Forest Service, Farm Services Agency, and CARES.

The federal deadline for this assessment was October 1, 1998. The assessment was done at the 8-digit hydrologic unit level. Mr. Barnett explained it was decided to use existing data since there was not time to collect information that would be directly applicable. Because of the sheer number of hydrologic units that were found to be in need of restoration, ranking of the watersheds occurred at the conclusion of the process.

There are 66 hydrologic units entirely or partially contained within Missouri. Four categories in which the hydrologic units were to fit were: those in need of restoration, those that were meeting the clean water goals, pristine units on government lands, and those with insufficient information to support the assessment.

A number of existing state data sources were used: the 303(d) List, MDC's Natural Heritage Database and Biotic Assessment, databases from the DNR Public Drinking Water Program, the Natural Resources Inventory from NRCS and others. Technical support provided by CARES was done through a GIS system interface that first collected the information and then to help the committee to better analyze the information. Internet access to maps and tools was provided.

The process for determining need of restoration was to find if there was sufficient information available to assess the hydrologic unit. If there was not, it was dropped from the assessment. Five had areas representing less than 5% of their total area and were being assessed by the surrounding states.

Mr. Barnett reported at the 8-digit hydrologic unit level there are no units in Missouri that even came close to 50% ownership by a federal, state, or tribal group so nothing was put into this category.

If the hydrologic unit contains a waterbody that has been placed on the 303(d) List, it is to be placed under in need of restoration. If the hydrologic unit was determined to have degraded aquatic conditions through its assessment of biological impairment, or there has been a net loss of wetlands in that unit, it was also placed in that category. Out of the 66 hydrologic units in Missouri, 56 of them were placed into the first category. Mr. Barnett stated the 303(d) List had a lot to do with this and was represented in many of the hydrologic units.

The committee recognized that one of the uses of this product would be for prioritizing projects for federal funding. A ranking of the 56 hydrologic units was developed based upon criteria within the databases. The group looked at the watersheds in need of restoration and developed 21 criteria to look at within each of those hydrologic units.

The committee picked the top five from the restoration schedule and rearranged those into a slightly different priority because of actual and potential activities in those hydrologic units. The same process was then used for the second group of five.

Mr. Barnett reported a project was initiated in 2001 by CARES to take a look at some of the same information at the 14-digit hydrologic unit level to update to more current information and to account for the potential for restoration and preservation as well as accounting for degradation.

Ms. Shannon reported NRCS has been working on the delineation of the different sizes of hydrologic units and recently completed their portion of it. This now has to go through lengthy review at the national level and to match up the boundaries of other states. There is

work being undertaken within the department and with NRCS and some preliminary discussions with MoWIAP to move this forward regardless of the status of any remapping.

Commissioner Perry asked how many of the 14-digit hydrologic units there are in the state.

Mr. Barnett responded there are close to 1800. He continued that hydrologic units don't necessarily equate to watersheds. They can have input from above and multiple outlets.

Commissioner Perry asked if there is coordination between hydrologic units and watersheds.

The hydrologic unit remapping is targeted more at lining up with actual watersheds than previously.

Mr. Barnett noted the term watershed is almost infinitely definable from the area of your backyard up to the Mississippi River Basin.

Commissioner Perry asked if CARES gets 319 funding.

Mr. Barnett responded CARES is not currently getting 319 funding but is a participant in a University Extension application for 319 funds. The last application by CARES for 319 funds was in the mid 1990s.

303(d) Methodology Rule and 2004 303(d) List Rule

Ms. Shannon reported the current federal rules require that states submit a proposed 303(d) List to EPA by April 1, 2004. State law passed in 2002 requires that the Department of Natural Resources promulgate the list by rule before sending it to EPA, which has not been done in the past. The 303(d) list is developed in accordance with EPA rules and guidance and also in accordance with the state's own Methodology Document. In August 2002, the Clean Water Commission directed staff to promulgate the 303(d) Methodology Document as a rule. This would need to be done before the 303(d) list is developed.

For several years, EPA has taken various steps to revise the federal rules that address the submittal of the 303(d) list. The proposed 1998 list was submitted in 1998 and approved by EPA many months later. The next list was due in 2000, however, EPA changed its rule so the list was not due. The next list was prepared for submittal to EPA by April 2002. EPA changed the requirements again in November 2001 so that the list would be due October 1, 2002. The proposed 2002 list was submitted to EPA August 27, 2002. EPA has not yet taken action on that list, but has stated to the commission and to the department that they expect to disapprove a portion of the list and will, therefore, be required to request public

comment on the draft list. EPA has indicated to staff that they expect that public comment period will be for a 60-day period, after which EPA will review comments and then issue a final Missouri 2002 303(d) List. Ms. Shannon pointed out that until the final Missouri 2002 303(d) List is in place, staff has nothing to work with in preparing the 2004 list.

Ms. Shannon explained EPA promulgated federal rules that would have changed the due date of the 303(d) list from every other year to every fourth year. Those rules were recently withdrawn without having become effective. EPA has made public their plans to promulgate a different rule that would also require the 303(d) list to be due every four years with the next list required in 2006, rather than 2004. However, those rules have not been published and are not yet in effect and staff has no way of knowing when this will occur.

Ms. Shannon stated the work to develop the next 303(d) list should be delayed until EPA's new rule is effective if possible. She continued it seems prudent to initiate steps necessary for submittal of a proposed 303(d) list on the due date of April 1, 2004. The following steps are necessary for that to occur:

1. Receive approval of the 2002 303(d) List from EPA.
2. Finalize the 303(d) Methodology Document, either through rulemaking or through a public participation process with a Public Notice and Request for Comment. Finalizing the Methodology Document could occur before EPA takes action on the 2002 list.
3. Solicit data and information to use in the development of the 2004 List. This could be done at the same time the Methodology Document is Public Noticed. This is what was done previously. It would not be prudent to solicit the data or information on what should happen to the list before hearing from EPA about the 2002 list.
4. Review data and information to develop a draft 2004 303(d) List and prepare a proposed rule.
5. Submit the Proposed 303(d) List as a Proposed Rulemaking, which will trigger a public comment period and public hearing. This is a complex process involving a number of steps prior to being submitted to the Secretary of State's Office. The rule can be published no sooner than 30 days after submittal to the Secretary of State's Office. Ms. Shannon noted once the proposed rule is published, it will contain the list of waters and the public will comment on it. If substantial changes are made during that comment period and those changes occur in the final Order of Rulemaking, there

- may be an objection that people did not have an opportunity to react to those substantial changes. The commission may want to have a public dialog prior to promulgating the rule, which would add time to the process.
6. Finalize the Proposed 303(d) List by addressing public comments and presenting it to the commission for approval.
 7. Submit the Proposed 303(d) List as a final Order of Rulemaking. Several review steps must occur within state government before the final Order of Rulemaking can be submitted to the Secretary of State for publication. Publication in the *Missouri Register* occurs no sooner than 30 days after submittal. Publication in the *Code of State Regulations* (CSR) occurs subsequently, and the rule becomes effective 30 days after publication in the CSR.
 8. Submit the Proposed 303(d) List to EPA.

Ms. Shannon noted the recommended schedule does not include developing the Methodology Document as a rule, which would add approximately 11 months to the timeline.

Due to the time constraint, Ms. Shannon recommended that the 303(d) Methodology Document be addressed through a public notice process as opposed to a rulemaking, and recommended the timeline included in the commission briefing packet for development of the next 303(d) List. However, if EPA changes the due date of the next 303(d) List, Ms. Shannon recommended this issue be revisited by the commission. Ms. Shannon concluded that no matter what staff does, they will not be able to meet the April 1, 2004 due date given the requirements for rulemaking. Staff could not have begun the development process earlier since there is no 2002 303(d) List on which to base their actions.

Ms. Shannon explained there is proposed legislation that would substantially increase the length of time involved in doing a rulemaking.

Responding to Chairman Herrmann's comments about commenting on the proposed 2002 303(d) List during the public notice period, Ms. Shannon will add receipt of the proposed list from EPA and commenting to EPA on the proposed list as the first step.

Commissioner Perry asked Mr. Bryan about the impact of the public notice method versus the rulemaking method.

Mr. Bryan replied the commission is open to a claim that the list should have been promulgated in accordance with rulemaking requirements of Chapter 536. That's one of the standards that will be relied on by someone in trying to set aside the action later on.

Commissioner Perry noted if the Methodology Document is not promulgated as a rule, they will get their legal fees back.

Mr. Bryan responded they will if they prevail on that claim. The risk is that later on a TMDL will be developed and implemented and someone won't like the impact that it has on them. One of their claims may be that the methodology document wasn't put together according to a rule so the implementation of that TMDL was null and void. Mr. Bryan noted he believes the commission would survive the claim that the methodology document should have been promulgated as a rule but the safest course when time allows is to promulgate as a rule.

Chairman Herrmann noted EPA guidance is needed first.

Ms. Shannon replied staff has current guidance and regulation from EPA so staff could proceed, but at the risk that EPA will change this at any moment.

Chairman Herrmann asked if guidance on which the methodology should be based would be included when the deadline is made known.

Ms. Shannon acknowledged that is correct.

Commissioner Minton stated during the timeframe the Methodology Document is being developed through a public notice process, EPA could come out with its Methodology Document which could be incorporated into the state's Methodology Document.

Ms. Shannon replied this could be done if a public notice process is done rather than a rulemaking.

Commissioner Minton noted surely EPA will come out with its Methodology Document during the state's development of its Methodology Document rulemaking so the state can accommodate EPA's methodology in its document. He stated the commission gave direction to staff months ago to move forward with the Methodology Document rulemaking and he stands by that direction.

Ms. Shannon replied staff has worked toward that goal and it's just a matter of whether the commission wants staff to proceed with the rulemaking or with the public notice process.

Commissioner Perry asked if going forward with the rulemaking at this time would be a waste of time because changes could not be made to the Methodology Document if it was done through rulemaking.

Ms. Shannon replied staff has tried to make the Methodology Document flexible by incorporating by reference EPA regulations.

Commissioner Minton noted EPA has not accepted the 303(d) List submitted by the commission since he has been on the commission. He continued that he sees nothing wrong with continuing with development of the Methodology Document because the commission cannot fail any worse than they already have in EPA's eyes.

Commissioner Perry commented EPA changes the list every time anyway.

Commissioner Minton stated going through the process of developing the methodology document will iron out a lot of the problems that are run into every time the list is approved. He concluded this will be a longer but better process where the commission could circumvent a problem down the road.

Commissioner Minton moved that staff follow the commission direction to **develop the 303(d) List Methodology Document by rulemaking**; seconded by Commissioner Kelly and unanimously passed.

Mr. Hull asked if the Methodology Document done by rulemaking has to become effective before staff can proceed with promulgating the 303(d) List by rule.

Ms. Shannon replied staff would have to complete the Methodology Document by rulemaking first.

Mr. Hull noted the 303(d) List would then be submitted over a year late.

Commissioner Minton noted that's problematic if a 303(d) List has to be developed for 2004 but that is not known at this time. He continued that the commission has been waiting on EPA's 303(d) List for almost a year.

Mr. Hull reported that staff has communicated with other states and they do not plan to meet the 2004 deadline for submission. He continued that he would like to do the list right and if EPA doesn't agree with that they can develop the list.

Commissioner Minton replied that's true and that's exactly what they've done on the last two lists. He stated going through the process systematically might develop a list that EPA will approve.

Commissioner Minton moved that the **commission meet after receipt of EPA's proposed 2002 303(d) List in order to submit comments within the comment period**; seconded by Commissioner Perry and unanimously passed.

Commissioner Minton asked if EPA will provide the commission the comments they receive from the general public.

Mr. Hull noted EPA will have to respond to the comments they receive.

Ms. Shannon replied she assumes they are a part of the record related to EPA's decision.

Commissioner Minton asked if a commission meeting would be held during the public comment period.

Mr. Hull replied if EPA follows through with a 60-day comment period, there will be a commission meeting before comments are due to EPA.

Enforcement Referrals

A-OK Campground

Mr. Mohammadi, Chief of the Water Pollution Control Program Enforcement Section, reported A-OK Campground located in Buchanan County is composed of twenty-four RV lots, forty-five mobile home lots, and a campground store. The campground's wastewater collection system consists of three 500 gallon and two 1000-gallon septic tanks. The receiving stream for unpermitted discharges from A-OK Campground is an unnamed tributary of Dillon Creek, a class C stream, waters of the state.

Since October 15, 1998, department staff completed four site inspections documenting septage from the septic tanks and lateral field serving the campground surfacing and draining into an unnamed tributary of Dillon Creek. It was also noted that the campground was operating without a Missouri State Operating Permit. The department has issued three Notice of Violations in October 1998, June 2002, and July 2002, for placing, causing or permitting to be placed a water contaminant in a location where it is reasonably certain to cause pollution of waters of the state.

To resolve the violations, the department mailed a letter to the owner in October 2002 offering an out-of-court settlement. The owner refused to accept the letter. On December 4, 2002, the letter was hand-delivered by the Buchanan County Sheriff's Department. On December 6, 2002, the owner contacted the department by telephone to discuss the violations

and civil penalty. It was requested that she submit a reasonable counter offer to the department's proposed civil penalty. The owner indicated that she does not intend to pay a penalty and would submit a letter indicating her intentions to the department by December 13, 2002. On December 23, 2002, the department mailed the owner a second letter requesting a response. To date, the department has not received a response from her regarding the penalty or case resolution.

Mr. Mohammadi requested referral of the matter to the Office of the Attorney General for appropriate legal action.

No one was present representing A-OK Campground.

Commissioner Minton moved to **refer the A-OK Campground to the Office of the Attorney General for appropriate legal action** as recommended by staff; seconded by Commissioner Hauser and unanimously passed.

Chairman Herrmann asked how far the campground is from Dillon Creek.

Mr. Mohammadi noted he will check on this and let Chairman Herrmann know the distance.

Forest Park Estates

Forest Park Estates is a 99-lot development located near Branson in Taney County. Mr. Mohammadi reported the development was originally designed and permitted for recreational vehicles (RVs) and the development now contains RVs, mobile homes, and permanent residences.

Pursuant to its Missouri State Operating Permit, Forest Park Estates operates a wastewater treatment system consisting of individual septic tanks for each lot, phosphorus treatment and reed bed wetland systems. Wastewater discharges to an unnamed tributary to Roark Creek.

Since 1998, five Notices of Violation were issued for violations that include construction violations, pollution, and significant noncompliance with permit effluent limits. In 1999, the department became aware that the wastewater treatment system serving Forest Park Estates was not built to the original design specifications. Only one of two reed bed wetland systems was built and no phosphorus treatment equipment was installed. Therefore, the wastewater treatment system at Forest Park Estates has the capacity to treat only 50% of the flow it was designed and permitted for and has no ability to treat phosphorus. At the time the department became aware of this situation, wastewater at the facility was estimated to be in excess of the actual capacity of the treatment system. The department has granted the owner multiple

opportunities to bring the wastewater treatment system into compliance. She has been given numerous deadlines for submittal of engineering reports, plans, and specifications addressing the upgrades, none of which have been met.

In October 2001, the owner submitted a renewal application for a state operating permit, which still included the incorrect description of the wastewater treatment system. In addition to providing false information on a Missouri State Operating Permit application, Forest Park Estates is also in violation of the Missouri Clean Water Law for failing to meet effluent limits, and failure to complete effluent monitoring, as required by the permit

The owner has attempted to turn over operating authority of the wastewater treatment facility to the Forest Park Property Owners Association. The department received notification that the Property Owners Association refused operating authority until the sewer system was brought into compliance.

The owner has indicated that she wishes to get out of Forest Park Estates as soon as all lots in the development are sold. She has continued to sell lots and has continued to request that the department allow lots to be connected to an already overloaded sewer system. If all lots are sold, the problems with the wastewater treatment system will be left to the Forest Park Property Owners Association or the new owners. The department has received numerous letters in the past several years from concerned property owners at Forest Park Estates fearing that the owner will leave without resolving the issues concerning the wastewater treatment system.

The Water Pollution Control Program has sent three letters and conducted one phone call offering an out-of-court settlement to resolve the violations of the Missouri Clean Water Law occurring at Forest Park Estates. The owner has not responded to the concept of an out-of-court settlement or a settlement agreement sent to her on February 18, 2003.

Mr. Mohammadi recommended the matter be referred to the Office of the Attorney General for appropriate legal action.

No one was present representing Forest Park Estates.

Commissioner Perry moved to **refer Forest Park Estates to the Office of the Attorney General for appropriate legal action** as recommended by staff; seconded by Commissioner Kelly and unanimously passed.

Lake Heights Estates

Mr. Mohammadi reported Lake Heights Estates, a subdivision north of Columbia in Boone County, was purchased in 1990. Pursuant to the Missouri State Operating Permit (MSOP) the owners operate a wastewater treatment facility that serves the Lake Heights Estates apartments, a laundromat, and a convenience store with a restaurant. The wastewater treatment facility consists of a 3-cell lagoon with an aerator in the first cell with a design flow of 6,750 gallons per day (gpd) and an actual flow of 7,325 gpd. Effluent from the lagoon is discharged to an unnamed tributary to Rocky Fork Creek.

The treatment facility is being operated in violation of the Missouri Clean Water Law to include a leaking lagoon, construction without a permit (adding aeration to the first cell), and discharging a contaminant to subsurface waters. There is consistent flow from cell 1 to cell 2; however, cell 3 is often very low or dry. The department had requested the owners to submit an engineering report to repair cell 2 and 3 of the lagoon as far back as February 1991. The MSOP, reissued in March 1991, contained special conditions requiring lagoon leaks to be repaired and for Lake Heights to connect to areawide sewers within 90 days of availability.

A Settlement Agreement was fully executed in October 1998, to resolve the violations. The Settlement Agreement required submission of an engineering report to include as-built plans describing recent facility modifications, submit an application for a MSOP, submit plans and specifications for upgrade and repair of the facility, and complete construction of upgrades within one year of construction permit issuance.

In April 1999, the Nichols proposed relocating the wastewater treatment facility and building a mechanical plant so it would be able to treat the wasteload of additional subdivisions. The relocation and additional wasteload of the facility required reevaluation of the continuing authority. In response to the construction permit application, the department requested resolution of the continuing authority situation in letters dated April 25, July 13, October 4, December 5, 2000, and January 11, 2001.

In December, 2000, the Nichols formed the Hinton Sewer Company, a not-for-profit sewer district, to build a new wastewater treatment facility and incorporate additional subdivisions beyond Lake Heights. In February, 2001, the Boone County Regional Sewer District (BCRSD) stated that a waiver of continuing authority to the Hinton Sewer Company would not be possible and as soon as the new facility was completed and operating, the facility would need to be turned over to the BCRSD. The Hinton Sewer Company applied to Boone County Planning & Zoning for a conditional use permit but was informed in the summer of 2002 by the Boone County Commission that if the BCRSD would not waive continuing

authority, the commission would not approve the permit. On July 22, December 4, and December 13, 2002, the Attorney General's Office requested from the owners, a plan for compliance with the Settlement Agreement.

To date, no such plan has been received nor has construction on a new facility begun nor have repairs to the leaking lagoon berms been made.

Mr. Mohammadi recommended the matter be referred to the Office of the Attorney General for appropriate legal action.

Commissioner Perry asked if this subdivision could be turned over to Boone County.

Mr. Mohammadi responded that is a good possibility and that is the only solution.

Commissioner Perry asked if litigation is needed in order for this to occur.

Mr. Mohammadi replied the Boone County Sewer District is not going to waive its continuing authority and wants to take over operation and maintenance and ownership of the treatment facility.

Chairman Herrmann asked if the Boone County Sewer District is certified by the Public Service Commission as the certificated authority for that area.

Mr. Mohammadi responded that Boone County is the certificated authority.

No one was present representing Lake Heights Estates.

Commissioner Easley moved to **refer Lake Heights Estates to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Minton and unanimously passed.

Salt Ridge Estates

Salt Ridge Estates is a small subdivision consisting of five duplexes and two single-family homes located in Camden County near Linn Creek. The wastewater treatment facility (WWTF) serving the subdivision is a small, unpermitted one-cell lagoon. The receiving stream for unpermitted discharges from the lagoon is an unnamed tributary to the North Fork of Linn Creek.

Mr. Mohammadi reported on July 24, 2000, a complaint was received by the department regarding a lagoon discharging raw wastewater into a stream without having a state permit. The complaint was investigated in October 2000, and the department issued a Letter of Warning and Notice of Violation and sent an Offer to Settle through an out-of-court settlement. Regardless of several extensions and correspondence to date no response has been received.

A construction permit for a new wastewater treatment facility was issued to Salt Ridge Estates on October 9, 2002. A site visit on March 31, 2003 showed no construction activity to date.

Mr. Mohammadi informed the commission that staff has reached tentative agreement with the owners and recommended referral to the Office of the Attorney General contingent upon no final settlement being reached within 45 days.

Commissioner Minton moved to **refer Salt Ridge Estates to the Office of the Attorney General for appropriate legal action contingent on no agreement being reached within 45 days**; seconded by Commissioner Kelly and unanimously passed.

Update Concerning Proposed Referral of Lake Region Water and Sewer Company

Mr. Mohammadi reported progress is being made although a signed document has not yet been achieved. The department's proposal was sent to Lake Region Water and Sewer Company's attorney late last week with the hope of reaching an agreement.

Harry Bozoian, Assistant Attorney General, informed the commission progress has been made. He explained a referral will ultimately need to be done since he will need to have authority to file a Petition and produce a Consent Judgment.

Fritz Ritter, Lake Region Water and Sewer Company, stated his attorney received the proposal at 4:30 Monday evening after which he left for Washington, D.C. He continued that this is the first he's heard that there has to be a referral.

Mr. Bozoian stated there is a Consent Judgment and Mr. Ritter's attorney is saying settlement is close. He suggested if that is not the case, Mr. Ritter's attorney needs to inform the commission where settlement is at.

Chairman Herrmann stated the attorneys need to discuss the settlement. If no settlement is reached, then it will come back to the commission to consider referral. Since progress has been made, a referral is not needed at this time.

Mr. Ritter noted Mr. Bozoian had stated that a referral will be needed.

Commissioner Perry asked why the matter shouldn't be referred rather than waiting until the next meeting.

Mr. Bozoian acknowledged that would be fine. He continued that there are different communications coming from Mr. Ritter and his attorney.

Mr. Ritter noted he does not have a problem with the agreement but rather the way the matter has been treated from DNR, through the commission, to the Attorney General's Office. He continued that he had been asked to sign an affidavit that he was not represented by an attorney.

Mr. Mohammadi stated the department needed to know if Mr. Ritter was represented by an attorney or not and asked for a letter from him regarding that issue. Once the Consent Decree is in place, if it is not complied with the matter will go to court, not back to the commission. Mr. Mohammadi stated the department believes Mr. Ritter will follow through and they want an assurance in a formal court order.

Mr. Ritter stated he wants a clarification from the commission on why the department determined before they could go through CC&P they needed the involvement of the Attorney General.

Chairman Herrmann responded the direction of the commission was that staff confer through the Attorney General's Office to Mr. Ritter's attorney to work out an acceptable solution. If that could not be accomplished, the matter would then be referred to the Attorney General's Office.

Mr. Ritter noted that was not what the commission did.

Chairman Herrmann stated that was the intent of the commission as he understood it and they will stand by that. He continued that Mr. Ritter should be represented by his attorney in the CC&P and it should come through the staff. If it is not acceptable, the commission will refer the matter. Chairman Herrmann stated CC&P is still ongoing and the commission does not have to take time to belabor this when commission direction is to work the matter out with the staff and with the Attorney General's Office and come back to the commission after that occurs.

Mr. Ritter asked if the matter does have to be referred to the Attorney General's Office before an agreement is completed.

Commissioner Perry responded Mr. Ritter needs to have his attorney explain the difference between a consent agreement and a consent decree.

Mr. Ritter asked if the negotiations that have occurred were the CC&P because the law says if the problem no longer exists, then CC&P is moot.

Chairman Herrmann said that is a legal interpretation for the attorneys.

Mr. Ritter noted there will be an agreement with the Attorney General's Office but he does not understand why the Clean Water Commission would refer this based upon the merits of the case due to CC&P and given the fact that there is no existing violation and a sewage treatment plant was constructed.

Chairman Herrmann stated Mr. Ritter should discuss this with his attorney.

Mr. Ritter noted he just wanted to hear what the commission has to say with that in mind. He asked if the referral will be delayed until next month.

Commissioner Minton stated unless he wants to be referred today which he would be more than happy to do.

Update Concerning Contingent Referral of Johnson Stock Farm

Mr. Mohammadi reported progress has been made on this matter and staff feels settlement will be reached by the next commission meeting.

Other

Terry Spence, Putnam County, explained that he expressed concerns to the commission on November 6, 2002 regarding the Climax II swine operation near Ashley, Missouri. Several issues still remain to be addressed regarding the construction. Mr. Spence asked why the lagoon was constructed west of the site that was designated for the lagoon. He indicated that he believes this action is a violation of the Clean Water Law and Clean Water Commission regulations.

Mr. Spence reported he believes false certification and approval of construction of a swine and dairy operation has occurred in Putnam County, which is another violation of the Clean Water Law. He asked why someone hasn't checked on the engineer that keeps certifying that these operations have been built as designed. Mr. Spence asked that the Clean Water Commission file a complaint with the Board of Architects and Professional Engineers against Harold J. Bax for the false certifications he is doing. He continued that he knows the department relies heavily on the engineers' certifications. Mr. Spence stated the commission was very effective in relieving another engineer of his license a few years ago when this was occurring at PSF facilities. He continued that if the commission is reluctant to move on this, citizens are prepared to file a complaint. Mr. Spence noted he believes it is in the commission's and department's best interest for the commission to file the complaint. He asked to be kept informed of the commission's action.

Chairman Herrmann stated the commission will have to consult with staff but he does not believe the commission is reluctant to file reasonable complaints.

Mr. Spence stated that the regional office did a very good job on the recent inspection.

Commissioner Perry asked if the regional office has checked on this.

Mr. Spence replied they met with regional office staff in January and March. They followed up immediately after the March meeting because the person that built the operation told them specifically that he did not compact the lagoon because he did not need to.

Commissioner Perry asked if the regional office provided the results of its investigation.

Mr. Spence responded the report on that investigation has been forwarded to the Water Pollution Control Program.

Chairman Herrmann asked that a follow-up be done with the regional office and well as staff in order to evaluate the issue.

Closed Session

Commissioner Easley moved to **go into closed session** at approximately noon to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Perry and unanimously passed.

Commissioner Easley moved to **return to open session** at approximately 2:10 p.m.; seconded by Commissioner Perry and unanimously passed.

INFORMATIONAL SESSION

Save Our Soil, Urban Erosion Control Workshop Update

Glenn Lloyd of the Department of Natural Resources Environmental Assistance Unit provided a presentation to the commission on the erosion and sediment control workshops his unit has been conducting.

ADMINISTRATIVE MATTERS

Budget and Legislative Discussion

Scott Totten, Director of the Water Protection and Soil Conservation Division, reported many of the environmental bills are being rolled together. The cost benefit analysis and risk assessment have been changed into a regulatory impact review and there is no relief for any of the department's rulemaking that simply adopt federal regulations or for administrative rules. This legislation is being rolled into the super commission proposals and with no stricter than requirements. An amendment to the hog bill takes out the requirement for neighbor notice 30 days prior to filing an application with the department along with changing the definition of CAFOs to fit the new federal regulation. There is also a requirement in that bill that any local ordinances have to be approved by the local Soil and Water Conservation District board (which relates to local health ordinances).

The Governor's budget recommendation reduced the department's general revenue by approximately \$2.5 million. The Jefferson City Regional Office is being closed as a result of this. House deliberations further reduced this amount by close to \$2 million. The House Budget Committee decided to lump sum all the appropriations so DNR has one appropriation for personal service out of general revenue and all of the other funds and one appropriation for expense and equipment from general revenue and all of the other funds and a large contingency of pass-through appropriations rolled together. Mr. Totten explained this means that it's left to the department director's discretion to allocate the general revenue and other funds to the different entities within the department as he sees fit. The Senate passed a budget that cuts about \$2 million. Both versions reduce additional general revenue out of the Water Pollution Control Program. Mr. Totten noted many are talking about a special session on the budget but that is not certain at this time. The Senate appropriated two numbers for each budget organization that they appropriated for; one if there is some tax revenue enhancement legislation passed and one if there isn't.

Commissioner Perry asked what sort of tax enhancement revenues are being discussed.

Mr. Totten replied changing the limits on how much can be lost per day in gaming and other items of this nature.

Commissioner Minton asked if the commission holds back some of the 319 money whether or not that money can be used to address water quality issues that the commission feels are important but won't be addressed due to loss of general revenue.

Mr. Totten stated he would hope so. There are a lot of things done internally such as the training done by the Environmental Assistance Unit where general revenue is used to match 319 funds to enhance the training. Information/education may be considered soft but, unless people understand what the problem is, people will not rally to develop a solution. Mr. Totten continued that the Elk River TMDL process began this week with meetings in McDonald County. A lot of people think there is not too much of a problem because you can't see phosphorus in the river, but there are significant water quality problems. The information/education component of that TMDL process is very key to this process so there is a base of understanding and organization. Mr. Totten stated staff will put together some additional criteria for the commission to review and to add any additional criteria to that. He noted the criteria by which applications are sought is where the commission needs to have an impact. A TMDL watershed has priority but is that any more a key in terms of how you calculate priorities than is any of the other criteria that are evaluated?

Commissioner Minton asked how reasonable it is to delay authorization of the 319 funds until the entire financial situation of the department is known.

Mr. Totten responded staff needs to provide something more definitive but the commission also needs to realize some flexibility may be needed. The impacts will hit July 1 and will affect the department, the university and several other partners that provide assistance in a lot of these areas. The Request for Proposals were already being received when the budget realities were identified.

Commissioner Minton stated the commission needs to be very careful how this money is spent.

Mr. Totten noted there have been discussions in Washington that 319 can be reduced since there is so much money in the Farm Bill for conservation practices. He continued that the 319 money can be spent on urban problems since the state cost-share and EQIP provides assistance to the rural areas. A lot of the ag nonpoint source projects that the Soil and Water

Districts Commission approves have a 319 component. Mr. Totten continued that Tracy Mehan of the USEPA is talking about a watershed approach to permitting and doing effluent trading.

Commissioner Minton noted he understands the need for education but you have to combine all the efforts and he is fearful that a lot of this is just fluff.

Mr. Totten responded it is much more effective to provide money to locals to conduct monitoring and information/education.

Commissioner Perry noted everyone has their own opinion and a certain concentration of certain parties getting massive percentages of the money makes it appear that there isn't a statewide focus.

Mr. Totten responded staff can develop some criteria for that with the commission's input.

Commissioner Perry commented just having the criteria for what is already there made available to the commission would be helpful.

Mr. Totten suggested criteria such as one grant every 5 years because there are so many needs and the money only goes so far.

Commissioner Perry asked that the commission be given enough time to review the information prior to the next meeting and that some sort of proposed plan the commission can vote on be included.

Other

Future Meetings

Mr. Hull noted some commissions in the department are trying to hold their meetings in DNR's Conference Center in Jefferson City for a time due to budget constraints if the commission wants to consider that.

Chairman Herrmann stated the commission's intention is to make itself accessible to the citizens around the state. If the budget allows, that is the preference.

Mr. Totten noted the hearing on the St. John's Bayou appeal is scheduled for June 3 in Jefferson City.

Commissioner Minton asked if the commission can ask questions during the hearing since the Administrative Hearing Commission will be serving as hearing officer.

Staff will check with the Administrative Hearing Commission prior to the hearing.

Chairman Herrmann asked that a meeting be scheduled in Cape Girardeau on June 18 if funds are available.

Mr. Hull reported a rulemaking is in progress on hydrostatic testing of pipelines and other structures. If legislation is passed that changes the rulemaking process, the public hearing may not occur in July.

Commission established meetings for July 30 and September 10 in Jefferson City.

Kansas City Chamber of Commerce

The Kansas City Chamber of Commerce reception is scheduled for September 24 in Kansas City. Mr. Hull noted with the September 10 meeting being scheduled, if the commission wants to attend the chamber reception, they would do that on their own.

Regional Commerce and Growth Association (RCGA)

Commissioners have been invited to the RCGA environmental council forum in St. Louis on May 6.

Cedar Creek Restoration Project

Commissioners will be receiving an invitation to participate in a tour of a restoration project paid for by 319 funds. This tour is scheduled for the end of May.

Adjourn

There being no further business to come before the commission, Chairman Herrmann adjourned the meeting at approximately 3:00 p.m.

Respectfully submitted,

Jim Hull
Director of Staff